

TRADEMARK
Docket No. 110.2*1/TJD/G480

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Giocar America, Inc., doing business as Galfer, Galfer USA and Galfer Braking Systems,

Opposer,

v.

Braking Italia S.R.I.,

Applicant.

OPPOSITION NO. 91159338

78, 164, 297



09-06-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

REPLY BRIEF FOR OPPOSER

In its main brief, filed on July 21, 2005, Opposer, Giocar America, Inc., doing business as Galfer, Galfer USA and Galfer Braking Systems, (hereinafter "Galfer USA"), satisfied its burden of establishing a prima facie case of likelihood of confusion, and that it has ownership and priority rights in the WAVE trademark.

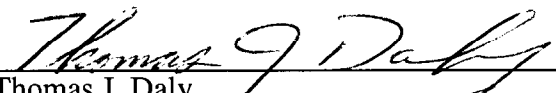
Applicant, Braking Italia S.R.I. (hereinafter "Braking Italy"), submitted no evidence during this proceeding that supports its application for registration of the WAVE mark. Specifically, Braking Italy filed no notices of reliance, it took no testimonial depositions, it did not attend or object to the taking or filing of Applicant's testimonial deposition of Alessandro Milesi, and it did not file a brief.

Galfer USA acknowledges that Braking Italy, as the Applicant in the position of defendant, is not required to file a brief in this proceeding. *See TBMP* § 801.2(b) and 37 CFR §2.128(a)(1). However, because Braking Italy failed to present any evidence supporting its affirmative defenses or its alleged date of first use in commerce, the affirmative defenses should be deemed waived and the earliest date Braking Italy can rely upon for priority purposes is the filing date of the instant application. *See Miss Universe, Inc. v. Drost*, 189 U.S.P.Q. 212, 213 (TTAB 1975). Therefore, Braking Italy's earliest date of use is September 16, 2002, which is more than three years after Galfer USA's date of first use in commerce, which Galfer USA has established, without contradiction, to be at least as early as February 1999.

Galfer USA respectfully requests that in light of the evidence established by Galfer USA, and the lack of any contrary evidence having been made of record by Braking Italy, that the Board issue an expedited ruling that sustains this opposition and refuses Braking Italy's application for registration.

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

Date: September 1, 2005


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CERTIFICATE OF MAILING AND SERVICE

I certify that on September 1, 2005, the foregoing **REPLY BRIEF FOR OPPOSER** is being deposited with the United States Postal Service by first-class mail addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

I further certify that on September 1, 2005, the foregoing **REPLY BRIEF FOR OPPOSER** is being deposited with the United States Postal Service by first-class mail addressed to:

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By 
Marti Carillo